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Lawrence Wilcock

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* LAWRENCE WILCOCK, RYCHARDE JEFFERY HAWKES,  
MICHAEL P. SPRATT, and SIMON EDWIN CROUCH

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Appeal 2008-0318  
Application 09/858,146  
Technology Center 2600

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Decided: July 15, 2008

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Before JOSEPH F. RUGGIERO, SCOTT R. BOALICK, and CARLA M.  
KRIVAK, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of  
claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' invention relates to the obtaining of location information for a mobile entity in which the location information is periodically updated from a first source of location information. The interval between updates from the first source is extended when location data is available from at least one other source that operates independently of the first source. (Specification 10:5-22).

Claim 1 is illustrative of the invention and reads as follows:

1. A method of obtaining location data about a mobile entity for provision to a location-sensitive application, the method comprising:  
periodically obtaining location updates indicative of the current location of the mobile entity from a first source of location data; and  
extending the interval between the location updates from said first source when location data indicative of the current location of the mobile entity is available from at least one other source of location data that operates independently of said first source and the location updates provided thereby.

The Examiner relies on the following prior art references to show unpatentability:

Cisneros	US 5,774,829	Jun. 30, 1998
Taft	GB 2339356 A	Jan. 19, 2000
Mannings	US 6,650,284 B1	Nov. 18, 2003
		(eff. filed Sep. 1, 1995)

Claims 1, 3-5, 8-11, 14, and 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cisneros in view of Mannings.

Claims 2, 6, 7, 12, 13, 15, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cisneros in view of Mannings, and further in view of Taft.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

## ISSUES

(i) Under 35 U.S.C. § 103(a), with respect to appealed claims 1, 3-5, 8-11, 14, and 16-18, would one of ordinary skill in the art at the time of the invention have found it obvious to combine Cisneros and Mannings to render the claimed invention unpatentable?

(ii) Under 35 U.S.C. § 103(a), with respect to appealed claims 2, 6, 7, 12, 13, 15, and 19, would one of ordinary skill in the art at the time of the invention have found it obvious to modify the combination of Cisneros and Mannings by adding the teachings of Taft to render the claimed invention unpatentable?

## PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in

*Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

## ANALYSIS

### *I. The rejection of claims 1, 3-5, 8-11, 14, and 16-18 based on the combination of Cisneros and Mannings.*

Appellants’ arguments in response to the Examiner’s obviousness rejection of each of the appealed independent claims 1 and 14 assert a failure by the Examiner to establish a *prima facie* case of obviousness since, even if proper motivation for the proposed combination were established, all of the claimed limitations would not be taught or suggested by the applied prior art references. In particular, Appellants’ arguments (Br. 4-6) focus on the contention that, in contrast to the claimed invention, neither of the applied Cisneros and Mannings references discloses varying the frequency of updates from a first location data source dependent upon the availability of location data from a second location data source, a feature present in each of the appealed independent claims 1 and 14. After reviewing the applied prior

art references in light of the arguments of record, we are in general agreement with Appellants' position as stated in the Brief.

The Examiner proposes modifying the positioning system disclosure of Cisneros by adding the location update interval varying feature disclosed by Mannings. According to the Examiner (Ans. 4), the skilled artisan would have found it obvious to modify Cisneros by adding the teachings of Mannings "in order to avoid unnecessary updates and thus improve the transmission capacity."

We agree with Appellants (Br. 5-6), however, that Mannings, at best, only provides a disclosure of varying the frequency of providing updates to a positioning system dependent upon changes in system conditions such as the speed of a vehicle, traffic conditions, highway maintenance, etc. (Mannings, col. 8, ll. 48-53 and col. 14, ll. 25-41). Accordingly, even assuming, *arguendo*, that a proper basis was established for the proposed combination of Cisneros and Mannings, the system resulting from the proposed combination would not satisfy the specific claimed limitations set forth in independent claims 1 and 14.

As argued by Appellants (Br. 5-6), the language of each of the independent claims 1 and 14 requires that the frequency of location updates of a first location data source is dependent upon a second location data source, specifically, the availability of location information from the second location data source. We agree with Appellants (*id.*) that, if the teachings of Mannings were combined with Cisneros, the logical result would be that the frequency of location updates would be the same for both sources of location data, a factual situation which does not satisfy the requirements of appealed claims 1 and 14.

In view of the above discussion, we are of the opinion that the applied Cisneros and Mannings references, even if combined, do not support the obviousness rejection. We, therefore, do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1 and 14, nor of claims 3-5, 8-11, and 16-18 dependent thereon.

*II. The rejection of claims 2, 6, 7, 12, 13, 15, and 19 based on the combination of Cisneros, Mannings, and Taft.*

We do not sustain this rejection as well. The Examiner has applied the Taft reference to the combination of Cisneros and Mannings to address the short range beacon and update condition features of these dependent claims. We find nothing in the disclosure of Taft, however, which overcomes the innate deficiencies of Cisneros and Mannings as discussed *supra*.

## CONCLUSION

In summary, we have not sustained the Examiner's 35 U.S.C. § 103(a) rejections of any of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-19 is reversed.

Appeal 2008-0318  
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REVERSED

tdl/gw

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